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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **JOANNE CANDICE MARTIN**  
13 **7572 Golfcrest Drive**  
14 **San Diego, CA 92119**

15 **Registered Nurse License No. 302819**

16 **Respondent.**

Case No.

**2012-76**

**A C C U S A T I O N**

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about May 31, 1979, the Board of Registered Nursing issued Registered Nurse  
23 License Number 302819 to Joanne Candice Martin (Respondent). The Registered Nurse License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 March 31, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480;  
or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related

1 to the qualifications, functions, and duties of the licensee in question, the  
2 record of conviction of the crime shall be conclusive evidence of the fact  
3 that the conviction occurred, but only of that fact, and the board may inquire  
4 into the circumstances surrounding the commission of the crime in order  
5 to fix the degree of discipline or to determine if the conviction is  
6 substantially related to the qualifications, functions, and duties of the  
7 licensee in question.

8 As used in this section, 'license' includes 'certificate,' 'permit,'  
9 'authority,' and 'registration.'

10 9. Section 2761 of the Code states:

11 The board may take disciplinary action against a certified or licensed nurse or  
12 deny an application for a certificate or license for any of the following:

13 (a) Unprofessional conduct, which includes, but is not limited to, the  
14 following:

15 ....

16 (f) Conviction of a felony or of any offense substantially related to the  
17 qualifications, functions, and duties of a registered nurse, in which event the  
18 record of the conviction shall be conclusive evidence thereof.

19 ...

20 10. Section 2762 of the Code states:

21 In addition to other acts constituting unprofessional conduct within the  
22 meaning of this chapter [the Nursing Practice Act], it is unprofessional  
23 conduct for a person licensed under this chapter to do any of the following:

24 ...

25 (b) Use any controlled substance as defined in Division 10  
26 (commencing with Section 11000) of the Health and Safety Code, or any  
27 dangerous drug or dangerous device as defined in Section 4022, or alcoholic  
28 beverages, to an extent or in a manner dangerous or injurious to himself or  
herself, any other person, or the public or to the extent that such use impairs  
his or her ability to conduct with safety to the public the practice authorized  
by his or her license.

(c) Be convicted of a criminal offense involving the prescription,  
consumption, or self-administration of any of the substances described in  
subdivisions (a) and (b) of this section, or the possession of, or falsification  
of a record pertaining to, the substances described in subdivision (a) of this  
section, in which event the record of the conviction is conclusive evidence  
thereof.

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## REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

...

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

## COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(November 5, 2010 Criminal Conviction for DUI on August 19, 2010)**

5 14. Respondent is subject to disciplinary action under 490 and 2761 subdivisions (a) and  
6 (f) of the Code in that Respondent was convicted of a crime that is substantially related to the  
7 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

8 a. On or about November 5, 2010, in a criminal proceeding entitled *The People*  
9 of the *State of California v. Joanne C. Martin*, case number M116639, in San Diego County  
10 Superior Court, Respondent was convicted on her plea of guilty/no contest of violating Vehicle  
11 Code section 23152 (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a  
12 misdemeanor. Respondent admitted and the court found true the enhancement that Respondent's  
13 BAC was .24%, which is three times the legal limit established by Vehicle Code section 23578.  
14 An additional count of violation Vehicle Code section 23152, subdivision (a), driving under the  
15 influence of alcohol, was dismissed pursuant to a plea agreement.

16 b. As a result of the conviction, on or about November 5, 2010, Respondent was  
17 sentenced to 5 years probation, ordered to complete 10 days of community service, ordered to  
18 complete a 9 month DUI program and ordered to pay \$2,040 dollars in fines.

19 c. The facts that led to the conviction are that on or about the evening of August  
20 19, 2010, Respondent was driving her vehicle while intoxicated. Due to her intoxication she  
21 struck a parked vehicle. Officers from the San Diego Police Department were summoned to the  
22 scene of the accident. Upon arriving on the scene, the officers found Respondent in such a state  
23 of intoxication she was barely able to stand. The responding officer noted that Respondent  
24 smelled strongly of alcohol. Respondent failed all of the field sobriety tests that were performed  
25 at the scene. She was arrested on suspicion of drunk driving and was administered a breathalyzer  
26 test which recorded her BAC to be .24, three times the legal limit.

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